IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4705 of 2001
Date of Decision: 2.4.2007

Om Pati ...Appellant

Versus

Bhim Sain and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ashish Aggarwal, Advocate, for the appellants.

Shri J.P. Singh, Advocate, for respondent No.1.

Shri Rupam K. Aggarwal, Advocate, for respondent No. 7.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby her suit challenging decree dated 29.11.1983 in favour of Bhim Sain defendant No.1 on the ground fo fraud and misrepresentation was dismissed.

One Ramji Lal was the owner of the suit property. After his death Om Pati, the plaintiff, his daughter from Durga inherited his estate to the extent of ½ share along with one Bhim Sain, the son of Durga from her first husband Bhartu. On 29.11.1983, the plaintiff suffered a consent decree in respect of her ½ share in favour of Bhim Sain which was made subject matter of challenge by the plaintiff in the present suit for declaration. The decree was challenged on the ground that the same is result fo fraud and misrepresentation.

The learned trial Court dismissed the suit holding that the

plaintiff has appeared in the Court and put her thumb impressions thereon and, therefore, it cannot be said that the appellant was vitcitm of any fraud, misrepresentation or concealment of facts. The learned trial Court also found that the suit is barred by limitation.

In appeal, the learned first Appellate Court has not reversed the finding recorded by the learned trial Court to the effect that the decree is not result of fraud or misrepresentation but found that the decree could not be suffered by the plaintiff holding that Bhim Sain has no pre-existing right, title or interest in the property. The learned first Appellate Court dismissed the suit holding that the suit is barred by limitation as such suit is governed by the provisions of Article 58 of the Limitation Act, 1963 (for short `the Act').

Learned counsel for the appellant has vehemently argued that the appellant has filed the suit for declaration on the basis of title in terms of Article 65 of the Act, hence, the suit filed by the plaintiff cannot be said to be barred by limitation. On the other hand, learned counsel for the respondents has argued that the finding recorded by the learned first Appellate Court that defendant No.1 has no pre-existing rights which could confer any right on the plaintiff to suffer a consent decree in favour of Bhim Sain, is not tenable.

The facts of the case leave no manner of doubt that Bhim Sain is an uterus brother of the appellant. Therefore, it cannot be said that Bhim Sain was a stranger to the appellant. He is in fact a member of the family of Ramji Lal. The dispute between the family could be settled by way of a compromise which can be recognised by the Civil Court. Consequently the finding recorded by the learned first Appellate Court that

defendant No.1 has no pre-existing right in the property in dispute is clearly not sustainable. This Court can reverse such finding in exercise of the provisions of Order 21 Rule 33 of the CPC. By reversing the finding recorded by the first Appellate Court, this Court is maintaining the decree passed though on different ground.

The plaintiff has challenged the decree on the basis of fraud and misrepresentation. Such finding has not been challenged by the appellant. Therefore, I do not find any patent illegality or irregularity in the findings, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

02-04-2007 (HEMANT GUPTA)
ds JUDGE